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MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Patent No. 7,743,902 :
Issued: June 29, 2010 :
Application No. 10/798,669 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: March 11, 2004 :
Dkt. No.: 47171-00426USP1 :

This is a decision on the petition filed August 27, 2010 requesting that the patent term adjustment for the above-identified patent be increased from 1284 days to 1754 days. This matter is being properly treated pursuant to 37 CFR 1.705(d).

The petition is hereby **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,743,902 on June 29, 2010. The patent issued with 1284 days of patent term adjustment. The instant request under 37 CFR 1.705(d) is timely filed. Patentee argues that the adjustment pursuant to 37 CFR 1.703(b) is 984 days (1206 days – 222 overlapping days).

The petition has been carefully considered, but is not persuasive.

The period of adjustment pursuant to 37 CFR 1.703(b) totals 1206 days. However, pursuant to 37 CFR 1.703(b)(4), any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court is not included in the period of adjustment pursuant to 37 CFR 1.702(b). Thus, in accordance with 37 CFR 1.703(b)(4), the number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 45, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

Accordingly, the period of adjustment pursuant to 37 CFR 1.702(b) and 1.703(b) does not include the period of time that accrued during the appeal periods (August 15, 2007 to July 24, 2008 and March 6, 2009 to February 17, 2010).

In view thereof, no adjustment to the patent term will be made.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Receipt is hereby acknowledged of the \$200.00 fee required per 37 CFR 1.18(e).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALEZIA M. BROWN/

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